

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF BIG RIVERS ELECTRIC)
CORPORATION FOR RECOVERY OF JULY 1995) CASE NO. 95-550
ENVIRONMENTAL COMPLIANCE COSTS)

O R D E R

Big Rivers Electric Corporation ("Big Rivers") has applied for authority to recover its July 1995 environmental compliance costs. Its application poses the following question: Does KRS 278.183(2) permit recovery of environmental compliance costs through a surcharge on customer bills which are issued more than two months after the month of the costs' incurrence? Finding in the negative, the Commission denies the application.

KRS 278.183 permits electric utilities to assess a surcharge to recover the costs of complying with the Federal Clean Air Act and certain other environmental requirements. Pursuant to this statute, the Commission on August 31, 1994 authorized Big Rivers to assess such a surcharge.¹ On September 20, 1995, Big Rivers submitted its first environmental surcharge report calculation. In its report, Big Rivers stated October 1, 1995 as the effective date for billing the surcharge for environmental compliance costs which were incurred in July 1995.

¹ Case No. 94-032, Application of Big Rivers Electric Corporation To Assess A Surcharge Under KRS 278.183 To Recover Costs of Compliance With Environmental Requirements Of The Clean Air Act (Ky. P.S.C. Aug. 31, 1994).

Finding that KRS 278.183 required Big Rivers to bill any surcharge for recovery of environmental costs incurred in the month of July 1995 no later than September 30, 1995, the Commission's Executive Director rejected the filing.² In rejecting the filing, he relied upon Section 2 of the Environmental Surcharge Statute which provides that:

Recovery of costs pursuant to subsection (1) of this section that are not already included in existing rates shall be by environmental surcharge to existing rates imposed as a positive or negative adjustment to customer bills in the second month following the month in which costs are incurred.

KRS 278.183(2) (emphasis added).

Contending that this interpretation is erroneous and that all statutory filing requirements have been met, Big Rivers then applied for authority to recover its July 1995 environmental compliance costs through a subsequent billing.³ It offers three arguments to support its application.

First, Big Rivers argues that KRS 278.183(2) requires that the electric utility place the environmental compliance costs on the customer bill for power usage incurred in the second month following the compliance costs' incurrence. For example, if compliance costs were incurred in July 1995, an electric utility

² Letter of Don Mills, Executive Director, Public Service Commission of Kentucky, to John J. West, Vice General Manager of Finance, Big Rivers Electric Corporation (Oct. 12, 1995).

³ Big Rivers' Application was filed on December 5, 1995. The Commission subsequently permitted Kentucky Utility Industrial Customers, Inc. and the Attorney General to intervene in this proceeding. No party sought a hearing in this matter.

must place them on its customers' bills for power usage incurred in September 1995. Big Rivers contends that this interpretation is consistent with its practice under the Commission's Fuel Adjustment Clause Regulation.⁴

The literal language of the Environmental Surcharge Statute, however, does not support this argument. KRS 278.183(2) contains no reference to a customer's bill for power usage for a particular month. It refers only to "customer bills in the second month following the month in which costs are incurred." The timing of the electric utility's filing of the proposed surcharge amount and of that amount's placement on customer bills, rather than an electric utility's billing cycle, is controlling.

The Commission's Fuel Adjustment Clause Regulation, furthermore, fails to support Big Rivers' position. Although this regulation does not expressly require a two month lag between the incurrence of fuel costs and their billing, most utilities follow that practice. In the case of Big Rivers, for example, July 1995 fuel costs are placed on August 1995 power usage bills which are issued to customers in September 1995. Had Big Rivers in this case followed the procedure used for fuel adjustment clause matters, it would have billed the July 1995 environmental compliance costs on September 1995 bills.

Big Rivers next argues that, assuming the Executive Director's interpretation is correct, Big Rivers' actions are consistent with

⁴ Big Rivers' Response to the Commission's Order of January 26, 1996, Item 1.

that interpretation. Big Rivers filed notice of the surcharge amount with the Commission on September 20, 1995. As KRS 278.183(3) requires an electric utility to file the surcharge amount with the Commission ten days before it is scheduled to become effective, Big Rivers' proposed surcharge became effective on September 30, 1995. Since it issued its bills on September 30, 1995, Big Rivers argues, it has complied with the Environmental Surcharge Statute.

The Commission finds little merit to this argument. Big Rivers' filing expressly stated that the effective date of the proposed surcharge amount was October 1, 1995. Its filing of the proposed amount on September 20, 1995 does not alter this date. KRS 278.183(3) merely establishes minimum notice requirements. It does not provide that a proposed surcharge amount is effective after ten days notice. If an electric utility provides greater notice, the stated effective date of the surcharge report governs.

The record, moreover, fails to support the contention that Big Rivers issued its bills on September 30, 1995. While the bills are dated "September 30, 1995," Big Rivers concedes that the meter readings on which these bills are based were not taken until October 1, 1995 and that these bills were neither prepared nor mailed until October 1, 1995. Under these circumstances, the Commission cannot find that Big Rivers' July 1995 compliance costs were imposed as an adjustment on its September 1995 customer bills.

Finally, the Commission does not accept Big Rivers' argument that, by preventing the recovery of the July 1995 compliance costs,


it will be frustrating the purpose of the Environmental Surcharge Statute. While the General Assembly perceived a need to require ratepayers to be charged for environmental compliance costs not included in existing rates, it also established a detailed procedure for recovery of those costs. Eligibility for recovery is dependent upon compliance with that procedure. As Big Rivers has failed to comply with those procedures, the utility is not entitled to the relief afforded by the statute.

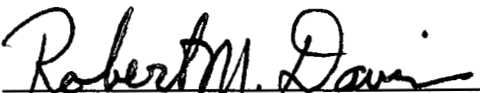
IT IS THEREFORE ORDERED that Big Rivers' application is denied.

Done at Frankfort, Kentucky, this 29th day of April, 1996.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director